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10/628,669	07/28/2003	Keith L. Henk	N322.12-0001	7118

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/628,669

Applicant(s)

HENK, KEITH L.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006 and 22 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-28, 35, 36, 40 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-34, 37-39, 41-45, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This non-final Office action is in response to (a) the amendment filed January 227, 2006 by which claims 1, 4, 29, and 37 were amended, and (b) the Request for Continued Examination filed February 22, 2006.

Request for a Continued Examination

The request filed on February 22, 2006 for a Continued Examination (RCE) under 37 CFR 1.114(d) based on parent Application No. 10/628,669 is acceptable and an RCE has been established. An action on the RCE follows.

Election/Restriction

Claims 8, 15, 17-28, 35, 36, 40, and 46 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and sub-species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 25, 2005.

Newly submitted claim 1 directed to a species that is independent or distinct from the species originally claimed for the following reasons: Claim 1 contains subject matter, namely the recitation "the media holding region is free of any horizontal element, including the first horizontal extension element" which is not directed to, i.e., does not read on, the elected species of Figures 1a-1c, 2a, and 3-8. Claim 1 now reads on the non-elected species of Figures 17 and 18.

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Since applicant has received an action on the merits for the originally presented species, this species has been constructively elected by original presentation for prosecution on the merits. *Accordingly*, since claims 2-7, 9-14, and 16 depend directly or indirectly from claim 1, claims 1-7, 9-14, and 16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Thus, claims 29-34, 37-39, 41-45, 47, and 48 have been examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "the media holding region is free of any horizontal element forward of the horizontal element" in the last two lines of claim 29 and in lines 12-13 of claim 37, renders the claims indefinite, since this recitation appears to be inaccurate and/or misdescriptive. *In particular*, since the media holding device rests on a (substantially horizontally) horizontal surface, such as perhaps a desk, or table, etc., it is unclear how the holding region is "free of any horizontal element". It is noted that the claims do not recite, for example, that there are no elements that lie between the media holding region that are attached to the uprights.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,800,958 (Dorn '958).

Dorn '958 discloses a holding device comprising a first upright (element 19, and including element 20 and the tip, from the apex of element 18 towards element 10, i.e., only half of one element 18 on the left side of Figure 2) formed from a first rod and forming a first vertical plane (see Figure 3) defined by at least one lower rear corner portion (at 20) and a second upright (element 19, and including element 20 and the tip, from the apex of element 18 towards element 10, i.e., only half of one element 18 on the right side of Figure 2) formed from a first rod and forming a first vertical plane (see Figure 3) defined by at least one lower rear corner portion (at 20); a horizontal support (element 16) connected (at 20) to the lower rear corner of the uprights and the uprights are separated by a distance; a media holding region is defined by the uprights and the horizontal support (16) and extends laterally between the uprights and forward (towards the top of Figure 2) of the horizontal support (16), whereby the holding region is free of any horizontal elements; *with respect to claim 30*, the uprights include frictional surfaces, i.e., the tips include rubber elements 13; *with respect to claim 31*, the length of the horizontal support (16) is adjustable for adjusting the distance between the uprights, i.e., the total length of the

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support is fixed but the length of the portion of the support between the uprights can be adjusted and changed by moving the uprights relative to each other, .

With respect to the recitation "free of any horizontal element", it is noted that the elements (i.e., the other halves of 18, and the other element 16), are additional elements necessary for the device of Dorn '958 to function. *However*, as best understood, in view of the Section 112, 2nd paragraph rejections advanced above, the language of claim 29 does not preclude additional elements attached to the uprights. *Thus*, the uprights of Dorn '958 have been defined above to include structure allowing the media holding region to be "free of any horizontal elements".

Claims 29, 31, 32, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 934,148 (Duff '148).

Duff '148 a holding device comprising a first vertical element upright (element D, in the rear on the left side of Figure 1, i.e., the first upright includes only one of the three elements D) formed from a first rod (generally at D) and forming a first vertical plane wherein there is at least one lower rear corner portion (between B¹ and D¹); a second vertical element upright (element D1, in the rear on the right side of Figure 1, i.e., the second upright includes only one of the three elements D1) formed from a first rod (generally at D1) and forming a first vertical plane wherein there is at least one lower rear corner portion (between B¹ and D¹); a horizontal extension (including B, C1, B1, and C, i.e., not elements B and B1 in the middle and front of Figure 1) comprising a first shaft (element B and C1, i.e., not including elements B in the middle and front of Figure 1) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane and a second shaft (element B1 and C, i.e., not

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including elements B1 in the middle and front of Figure 1) element formed from a portion of the first rod and extending from the lower rear portion, perpendicularly to the first vertical plane; the uprights (D and D1) are separated by a distance and a media holding region is defined by the uprights and the first (B and C1) and second (B1 and C) shafts and extends laterally between the uprights and forward (towards the front perspective side of Figure 1) of the horizontal support, whereby the holding region is free of any horizontal elements; *with respect to claim 31*, the length of the horizontal supports can be adjusted; *with respect to claim 32*, the horizontal support comprises first (B, at the rear of Figure 1) and second (B1, at the rear of Figure 1) shafts slidably connected (at C1 and C) to converge and diverge; *with respect to claims 38 and 44*, the portions (at C and C1) of the shafts define a stop for limiting the distance between the uprights; *with respect to claims 39 and 45*, the stops are considered to define guide bushings;

With respect to the recitation "free of any horizontal element", it is noted that the elements (i.e., B and B1 at the middle and front of Figure 1), are additional elements necessary for the device of Duff '148 to function. *However*, as best understood, in view of the Section 112, 2nd paragraph rejections advanced above, the language of claim 29 does not preclude additional elements attached to the uprights. *Thus*, the uprights of Duff '148 have been defined above to include structure allowing the media holding region to be "free of any horizontal elements".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30, 33, 34, 41-45, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duff '148.

Duff '148 discloses the device as advanced above.

The claims differ from Duff '148 in requiring: (a) the stops (claim 41) comprising frictional means for providing frictional resistance to the horizontal support (claims 34, 41, and 47); (b) the uprights to comprise a frictional surface (claims 30, 33, 42, and 48); and (c) the first upright and the first shaft to be formed from a *first single formed rod* and second upright and the second shaft to be formed from a *second single formed rod* (claim 43).

With respect to (a), although Duff '148 does not explicitly state that the stops comprise frictional means, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) that the holes, i.e., means, in the stops (C and C1) through which the horizontal support (B and B1) moves, can be fabricated such that a frictional resistance exists, thereby increasing structural support of the device.

With respect to (b), although Duff '148 is silent as to the material from which the stops (C) and uprights (D) are made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the stops and uprights from a rubber material, thereby defining a frictional means, and allowing for increased securement and stability of the device when in use.

With respect to (c), although Duff '148 does not explicitly state or show that the upright and respective shaft is formed from a single formed rod, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the first upright and the first shaft

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are considered to be formed from a *first single formed rod* and second upright and the second shaft are considered to be formed from a *second single formed rod*, since when taken apart the first shaft would be connected to the first upright, thereby allowing for ease in assembly.

Response to Arguments

Applicant's arguments with respect to claims 29-34, 37-39, 41-45, 47, and 48 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting "free of any horizontal element" in claims 29 and 37. It is noted that although the Dorn and Duff references have been utilized again to reject the claims under Sections 102 and 103, where applicable, the description of elements by the examiner has changed, in response to the amendments to claims 29 and 37.

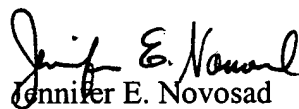
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

March 28, 2006